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O Level Islamiyat

Sources of Islamic Law



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Content List

No.	<u>Topic</u>	Pg.
1.	Sources of Islamic Law	5
2.	The Quran	6
3.	The Sunnah	10
4.	Relation between Quran and Sunnah	14
5.	Ijma	16
6.	Qiyas	20



Sources of Islamic Legal Thinking (Shariah)

- Source means origin, root, foundation or base etc.
- Law means, rule, regulation, decree, act etc.

Why should we know about the sources of law/ jurisprudence?

- Sources of law help us to know the origin of any law. It tells, from where have we got/ derived any particular law.
- Some sources are stronger and valuable than the others. Knowledge of the sources of law helps us to formulate better laws for society. If we get some guidance/ information from more powerful and valuable source of law then we can make changes in current laws to improve them.
- Knowledge of the Sources of Islamic law tells us the importance of Divine Sources as laws based on divine sources are unchangeable.

Laws are always based on **knowledge**. Muslims use both **Divine knowledge** and **Reasoning based knowledge** in law making or legal thinking but they consider divine knowledge as the primary source of law and Reasoning (cognitive knowledge) as the secondary source.

Primary Sources of Islamic law includes

- **The Quran** and
- **The Sunnah.**

Secondary Sources include

- **Ijma (Consensus)/ Collective Reasoning** and
- **Qiyas (Analogy)** and
- **Logical Reasoning (Aqal).**

Mu'adh bin Jabal (RA) reported that (when) Allah's Messenger sent him to Yemen, he asked him 'how he would judge (decide cases). He said, "I will judge in accordance with Allah's Book (the Qur'an)." He asked, "What, if it is not found in the Book of Allah?" He said, "Then according to the Sunnah of Allah's Messenger: ." He asked, "And if it is not in the Sunnah of Allah's Messenger?" He said, "I will make **ijtihad** through my judgment." The Prophet - said, "Praise belongs to Allah Who has made the messenger of the Messenger of Allah consistent with what pleases him."

Ijtihad (Reasoning) includes both Analogical Reasoning (Qiyas) and Logical Reasoning (Aqal).

Primary Sources of Islamic Law

The Quran

- The sacred book of Muslims and the foundation of Islam. It is the last Divine Scripture revealed to Holy Prophet Muhammad (PBUH), over a period of twenty three years, through Angel Gabriel from 610 C.E. till 632 C.E.
- The Qur'an is the primary, original and fundamental source of law in a Muslim society from which all principles, ordinances and injunctions of Islam are drawn.
- It contains the set of juridical instructions which are the bases of Islamic law and concerns the life of human beings in every detail.
- It is the direct word of God as revealed to Muhammad (PBUH) through in Mecca and Medina.
- It specifies the moral, philosophical, social, political and economic basis on which a society should be constructed.
- The verses revealed in Mecca deal with philosophical and theological issues, whereas those revealed in Medina are concerned with socio-economic laws.
- The Qur'an was written and preserved during the life of Muhammad, and compiled soon after his death.
- Anything against the Quran from any of the source of legal thinking will be rejected. **All the other sources must be in confirmation with the Quran.**

Why Quran is the primary source of Islamic Law?

Because Allah orders in the Quran:

- *"Judge between people by what God has revealed and follow not their vain desires."* (17:09)
- *"The Holy Quran is a guidance for mankind, the clear proofs of guidance and the criterion of right and wrong".* (2:185)
- *"It is not fitting for a believer man or woman, when a matter has been decided by Allah and His messenger, to have any opinion about their decision; if anyone disobeys Allah and His messenger, he is indeed on clearly wrong path".* (33:36)
- *"We have revealed to you the book in truth, so that you may judge between people by what Allah has shown to you. So be not a pleader for dishonest."* (4:105)

Prophet Muhammad (PBUH) also said:

- *"He who acts according to the Holy Quran is rewarded and he who pronounces judgment according to it is just".*

Reasons:

- Quran laws are given by the Creator who has perfect knowledge about the exact nature of human life, human societies and man's psychology. That's why these laws are accurate, comprehensive, and universal code of conduct for humanity. They govern all the actions of the Muslims and deal with every aspect of human life such as religious, social, economic, moral and political etc. Allah says in the Quran: *This day have I perfected your religion for you completed my favor upon you and have chosen for you Islam as your religion.* (5:3)
- In any human society certain unchangeable laws are necessary so that the powerful and influential classes of society may not change the laws for their own interest. Thus, unchangeable perpetual Quranic laws are Allah's mercy for humanity.

- Quranic laws deal with both the ends, this world and the ultimate end of the hereafter.
- Quranic laws are humanistic by nature. They recognize the failure of human nature and hence do not lay undue burden. Allah says in the Quran *“Allah does not charge a soul with more than it can bear.”* (2: 286)

Muslim jurists agree that those Quranic verses that are legal in nature can be categorized as either

- **Muhkamat (Decisive):** They are considered as **NASS** or **“Absolute Categorical decrees”**.

They contain **AWAMIR** (orders) and **NAWAHI** (Forbidden)

Nass are express commandments that convey a clear meaning and scope. They are called MUHKAMAT.

- **MUTASHABEHAT (Allegorical):** These are the verses whose meaning is open to interpretation. Openness of certain verses to interpretation gives rise to diversity in opinion, if not outright disagreement. Some present day differences on Islamic legal issues are due to the divergence in opinion over the MUTASHABEHAT verses and lack of the systematic practice of Consensus/IJMA

Examples of Quranic Laws

Theft

Punishment of theft is mentioned in the Quran in following verse. This law is presently in enforcement in Saudi Arabia.

“As for thief, male or female, cutoff their hands as a penalty for what they have earned and an exemplary punishment from Allah. Allah is the Mighty the Wise.” [5:38]

Adultery

“Do not go near adultery. Surely it is filthiness and evil way.” [17:32]

“The woman and man found guilty of adultery, flog each of them with hundred strips...” [24:2]

Abortion (because of poverty fear)

“Kill not your children in dread of poverty, We provide for both them and you. Killing them is a greater blunder indeed.” [17:31]

Usury / Interest

“Those who swallow usury will stand up only like the one whom the Devil has left insane by touch. That is because they say ‘trading is also just like usury’. Whereas Allah has permitted trading and forbidden usury.” [2:275]

Inheritance

As regards inheritance, *“Allah enjoins you concerning your children that: The share of the male shall be twice that of the female. In case the heirs be more than two females, their total share shall be two thirds of the whole and if there be only one daughter, her share shall be half of the whole.”* [4:11]

Lawful food

"Lawful unto you (for food) are all four footed animals with the exception named....."(5:1)

"O you who believe, intoxicants, and gambling, and the altars of idols, and the games of chance are abominations of the devil; you shall avoid them, that you may succeed". (5:90)

"He hath forbidden you only carrion, and blood, and swine flesh, and that which hath been immolated to (the name of) any other than Allah. But he who is driven by necessity, neither craving nor transgressing, it is no sin for him. Lo! Allah is Forgiving, Merciful" (Qur'an 2:173).

Divorce

Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah. (2:229)

Dower

Give them their dowries as an obligation. And there is no blame upon you for what you mutually agree to beyond the obligation. Indeed, Allah is ever Knowing and Wise. (4:24)

Intentional Murder and Mischief making in land

"If anyone kills a person—unless it is for murder or for spreading mischief in the land—it would be as if he killed all people. And if anyone saves a life, it would be as if he saved the life of all people" (Quran 5:32).

"Take not life, which God has made sacred, except by way of justice and law. Thus does He command you, so that you may learn wisdom." (Quran 6:151)

"And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers". [5:45]

Islamic philosophy holds that a harsh punishment serves as a deterrent to serious crimes that harm individual victims or those that threaten to destabilize the foundation of society. According to Islamic law (in the first verse quoted above), the following two crimes can be punishable by death:

- Intentional murder
- *Fasad fil-ardh* ("spreading mischief in the land")

The Quran legislates that the death penalty for murder is presented, although forgiveness and compassion are strongly encouraged. In Islamic law, the murder victim's family is given a choice to either insist on the death penalty or to pardon the perpetrator and accept **"Monetary compensation/ Blood money"** for their loss. *"O believer! Compensation for the murder is prescribed for you" (Quran 2:178).*

The second crime mentioned in the verse for which capital punishment can be applied is a bit more open to interpretation, and it is here that Islam has developed a reputation for harsher legal justice than what is practiced elsewhere in the world. "Spreading mischief in the land" can mean many different things, but it is generally interpreted to refer to those crimes that affect the community as a whole and destabilize society.

Crimes that have fallen under this description have included, Treason/ Apostasy (when one leaves the faith and joins the enemy in fighting against the Muslim community), Terrorism, Land, sea, or air piracy, Rape, Adultery and Homosexual behavior etc.

False Charges

“And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient,” (24:4)

The Quranic laws deal with beliefs, morality, worship, civil transactions, punishments for intentional injury to human body property and honor, murder, breach of public peace such as robbery, offence against religion such as non-payment of Zakat, against indecency, adultery, use of intoxicants, gambling and offences against establish government such as rebellion etc. The Quran also lays down rules and regulations relating to social life, commerce and economics, marriage and inheritance, penal laws and international conduct etc.

Sunnah of Prophet Muhammad (PBUH)

Sunnah includes:

- Sayings of Muhammad (PBUH).
 - Actions of Muhammad (PBUH)
 - Silent (Tacit) approvals of Muhammad (PBUH)
 - Descriptions of his personality and his letters and his treaties and agreements.
- Sunnah i.e. the sayings and practices of the Holy Prophet (PBUH) is the second Source of Islamic law.
 - The Holy Prophet (PBUH) not only conveyed the Divine Message to the people but also explained them through his actions, and words. The broadest consensus in Islam is that Prophet Muhammad (PBUH) is the fountainhead of the knowledge of Islamic laws. Indeed, the Prophet (PBUH), through his life and actions, rendered the Holy Quran easier to understand.
 - The meaning of Quranic verses and their application have to be understood in the light of his sayings, actions, practices, explanations which are the second Source of Islamic jurisprudence from which the teachings of Islam are drawn.
 - It literally means way or life style. It includes practices of Muhammad (PBUH). His code of conduct and life style. Muhammad (PBUH) is model of excellence for humanity so his Sunnah has been preserved for coming generations to follow.
 - Someone asked Ayesha (Mother of Faithful) about Muhammad's way of life (Sunnah). She replied: *"Have you not read the Quran?". His life style was the practical demonstration of the Quran and the Will of God.*
 - Sunnah is the actual embodiment of the will of Allah, shown in the actions of the Holy Prophet (SA).

Difference between Hadith and Sunnah

- Sunnah is what Muhammad (PBUH) practiced and Hadis is the channel through which his Sunnah is preserved and perpetuated.
- Sunnah is the way of Prophet Muhammad (PBUH) and its report is called Hadith. Drinking water while sitting with right hand is one of the ways of Muhammad (PBUH) [Sunnah] which is reported in many Ahadith. Hadith contains two parts SANAD/Chain of narrators and MATAN/Body Text.
- A Sunnah can be mentioned in many Ahadith. As the chain of narrators changes or words are changed, it is counted a different Hadith. But Sunnah remains the same because of the similarity of action or the main theme of report.
- Sunnah is what is done by Prophet Muhammad (PBUH) and Hadith is how it is reported and narrated.

Why the Sunnah qualifies as the primary source of Islamic law?

- As a final Messenger of Allah, the Holy Prophet (PBUH) alone is authorized by Allah to determine the meanings of the Holy Quran, to unfold the deep wisdom of the human beings and elevate them to the highest pinnacle of morality. The Holy Quran says: *“Lo! We have sent thee (O Muhammad) with the truth, a bringer of glad tidings and a warner...”* (2:119) It is also stated in that: *“And we have revealed unto thee Remembrance that thou must explain to mankind that which hath been revealed for them, and that happily they may reflect....”* (16:44)
- The deeds, behavior, character, and conduct of the Holy Prophet (PBUH) furnish a role model for his followers. The Holy Quran says: *“Verily in the Messenger of Allah ye have a good example for him who looketh unto Allah and the Last Day....”* (33:21).
- It is reported in Al-Bukhari that the Holy Prophet (PBUH) said: *“Surely, I was only sent to complete the most noble character traits.”* According to an oft quoted tradition, when a person asked Hazrat Ayesha about the conduct of the Holy Prophet (PBUH) many years after his death, she said: “Have you not read the Quran? His conduct (Khulq) was the Quran.
- “Whatever the Holy Prophet (PBUH) said or did was inspired or revealed, for he neither said anything nor did anything of his own accord. The Holy Quran says: *“I follow only that which is inspired in me from my Lord.”* (7:203).
- Obedience to the Holy Prophet (PBUH) has been enjoined upon his followers. The Holy Quran says: *“And obey Allah and the Messenger, that ye may find mercy.”* (3:132)
- *“O ye who believe! Obey Allah, and obey the Messenger and those of you who are in authority; and if ye have a dispute concerning any matter, refer it to Allah and the Messenger.”* (4:59)
- *“Whatever Prophet (PBUH) gives you take it and whatever he forbids refrain from it.”* (59:07)
- *“Nor does he speak from [his own] inclination. It is not but a revelation revealed.”* (53: 3-4)
- *“We sent no messenger save that he should be obeyed by Allah’s leave....”* (4:64)
- *“But nay, by the Lord, they will not believe until they make thee judge of what is in dispute between them and find within themselves no dislike of that which thou decidest.”* (4:65)
- *“Those who obey Allah and His Messenger will be admitted to gardens, with rivers flowing beneath, to abide therein (forever) and that will be the Supreme achievement.”* (4:13)
- *“Those who annoy Allah and His Messenger – Allah has cursed them in this world and in the Hereafter, and has prepared for them a humiliating punishment.”* (33:57)

The Sunnah of the Holy Prophet (PBUH) sets out comprehensive rules relating to all aspects of life. The Holy Prophet (PBUH) gave his people a religion, which he himself scrupulously practiced (and in doing so, provided them with a perfect example to follow).

He founded a state which he administered, led his armies in different encounters, married and maintained a family. In all these aspects of life, whatever he did and the way he did became part of the Shariah, and hence a source of Islamic Law and Legal Thinking for us all, to be followed as such.

He is reported to have said, **"I leave with you two things. If you hold fast by them both you will never be misguided, The Book of Allah and My way (Sunnah)."**

Sunnah must be in confirmation with the Quran. Any hadith against The Quran will not be accepted and will be considered as a fabrication/ fabricated hadith. (MAWDOO HADITH).

Laws in Sunnah

Marriage

List of women whom a person cannot marry are given in the Quran.

Prohibited to you [for marriage] are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your [milk] mothers who nursed you, your sisters through nursing, your wives' mothers, and your step-daughters under your guardianship [born] of your wives unto whom you have gone in. But if you have not gone in unto them, there is no sin upon you. And [also prohibited are] the wives of your sons who are from your [own] loins, and that you take [in marriage] two sisters simultaneously, except for what has already occurred. Indeed, Allah is ever Forgiving and Merciful. (4:23)

Wife's paternal aunt and wife's maternal aunts are not mentioned in this list but they were prohibited by following hadith of Prophet Muhammad (PBUH): **"A woman and her paternal aunt cannot be united nor a woman and her maternal aunt."** (Agreed)

Inheritance

A Muslim may not inherit from a Non-Muslim nor may a Non-Muslim inherit from a Muslim". (Agreed)

Theft

Sunnah restricts to the thief who steals wealth equal to the Nisab and steals from the protective custody.

Adultery

The Qur'anic punishment of 100 lashes is for the case of an unmarried person. For a married person we need to turn to the Sunnah/Hadith, which prescribes death by stoning.

Usury/ Interest

"Gold (in exchange) for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, similar for similar, like for like, hand over hand; if these description differ then sell how you wish, when it is hand over hand. ' (Muslim)

Jabir (may Allah be pleased with him) narrates that the Messenger of Allah (may Allah bestow peace and blessings upon him) cursed the consumer of interest, its patron, the recorder (of the transaction) and the witness, he said, they are all the same."

Unlawful food

Ibne Umar narrated that Allah's Messenger prohibited eating the animal which feeds on filth or drinking its milk. (Tirmizi)

Prayer, Fasting, Zakat, pilgrimage etc

The Quran orders Muslims to pray, but it does not mention how many times Muslims should pray. Or, when and how to pray. Prophet (PBUH) said : "Pray as you saw me praying." (Al-Bukhari)

Zakat (obligatory alms), fasting the month of Ramadan, monetary transactions, and so on. All of the above titles are touched on briefly by the Quran but the Sunnah elaborates on them.

Relationship between the Quran and the Sunnah

1. The Quran authorizes the use of Sunnah

As obedience to the Holy Prophet (PBUH) has been enjoined upon his followers. The Holy Quran says: *“And obey Allah and the Messenger, that ye may find mercy.”* (3:132)

2. Sunnah merely corroborates and reiterates the Quran

The Quran says *“Devour not each other’s properties unlawfully unless it is through trade by your consent”* (4:19)

Sunnah corroborated it. Prophet (PBUH) said: *“It is unlawful to take the property of a Muslim without his express consent”.*

3. Sunnah explains the QURAN

The Quran gives the basic principles and fundamental rules of Islamic beliefs and practices.

The Quran repeatedly asks us: *“Establish regular prayer and pay the poor due.”* (2.43)

Without speaking about the timings, number of rak’ats and manners in which it should be performed. Sunnah of the Prophet explains it.

The Holy Prophet provided additional guidance by saying: *“There is no prayer for the one who does not recite the opening chapter of the Book* (Quran).”

Also guided about the manners concerning the daily prayers: *“When a person is drowsy in his prayer, let him go to sleep until he knows what he recites.”*

And finally: *“Look at me, see I worship and follow me”* (Al-Bukhari)

Similarly the Quran orders to pay Zakat but how much of one’s wealth is to be paid as the charity tax is explained in the Sunnah.

The Prophet gave all the details e.g. **2.5%** of the wealth as **Rate of Zakat** and mentioned 87.3grams (7 ½ tolas) of gold or 611.1grams (52.5 tolas) of silver as **Nisab** (Standard of eligibility to pay Zakat).

He further elaborated rate of zakat on various other assets:

“No charity tax is due on property amounting to less than five uqiya of silver and no charity tax is due on fewer than five camels and there is no charity tax on fewer than five wasq of dates or grains.”

(1 Wasq=425 pounds / 135 kg; 1uqiya = ¼ pounds / 128 grams)

Hadith/ Sunnah of the Prophet provide the explanation of the teachings of the Quran.

The Quran says, *“Allah has permitted trade and forbidden Riba”* (2:275)

Sunnah of the Holy Prophet provides detail of the Riba by saying,

The Holy Prophet said. *“The bartering of gold for gold is Riba, except if it is from hand to hand and equal in amount, and wheat grain for wheat grain is Riba, except if it is from hand to hand and equal in amount”*

Sunnah of the Holy Prophet provides practical methods of Islamic practices. The Quran enjoins us:

“Pilgrimage thereto is a duty men owe to Allah, those who can afford the journey”

Full method of the Hajj is not mentioned in Quran. Sunnah of Prophet explains its performance, as it is said.

Ibn Umar reported,

“The Holy Prophet pronounced Talbiyah in Hajj and Umrah”

4. Sunnah restricts the law

Sunnah restricts to the thief who steals wealth **equal to the Nisab** and steals from the **protective custody**.

The Qur`anic punishment for adultery by **100 lashes** is restricted to unmarried person by Sunnah. For a married person Sunnah prescribes **death by stoning**.

5. When the Quran is silent

Sunnah is the independent source of law when the Qur`an is silent on a matter; e.g. inheritance given to grandmother.

Buraydah (RA) said: *“The Prophet assigned **one-sixth** of the inheritance for the grandmother if the deceased did not leave a mother.”* [Abu Daawood and An-Nasaa’i]

Wife’s paternal aunt and wife’s maternal aunts are not mentioned in this list but they were prohibited by following hadith of Prophet Muhammad (PBUH): “A woman and her paternal aunt cannot be united nor a woman and her maternal aunt.” (Agreed)

A Muslim may not inherit from a Non-Muslim nor may a Non-Muslim inherit from a Muslim”. (Agreed)

6. Sunnah must be in confirmation with the QURAN

Anything against the Quran in Hadith is considered as fabrication. Prophet’s (PBUH) life was a practical example of the Quran.

To conclude, the Quran and the Sunnah together are the sources of guidance and laws for Muslims.

That is why they cannot be separated, as they work harmoniously to convey the message of Islam and show people what Allah wants from them in order for them to lead the best life on this earth and also to win Heaven in the hereafter.

IJMA (Consensus)

Meanings/ Definition

After the Holy Quran and Sunnah, Consensus (Ijmah) is the third source of Islamic Law. If a legal solution is neither available in Quran nor in Sunnah, then Islam allows Muslims to find a solution which is agreed upon and accepted by the majority of the Muslims.

The word **Ijmah** is derived from the word '**Jama**', which means **to unite or add**.

In legal terms, it means *a procedure through which any principle of law is formulated by unanimous opinion.*

It has also been defined as a unanimous agreement of the Muslim jurists in a particular age on a particular question of law.

Nature and Scope

A student of Islamic law should be aware that Ijma does not enjoy the reverence of the Quran or the Sunnah of the Prophet (PBUH). Ijma enjoys law making authority in Islamic Law only when the Holy Quran or the Sunnah do not provide legal answers or, when the answers are incomplete. It should be noted that the norms stipulated in the Holy Quran and the Sunnah whilst they are universal in their scope, require further development to apply to future circumstances. Hence, the jurists in Islamic Law used to make further laws through consensus/IJMA.

Why IJMA is used as a source of Law?

The authority of Ijmah as a source of Legal Thinking and Islamic Law is founded on the following verses of the Holy Quran:

- *Hold fast to Allah's rope all together and never be divided.* (03:103)
- *You are the best community ever raised up to humanity. You bid for the desirable, forbid the distinguishing and believe in Allah.* (03:103)
- *"And those who strive in Our cause, we will certainly guide them to our paths."* (29:69)
- *"If they had referred it to the Messenger and such of them as they are in authority, those among them who are able to think out the matter would have known it."* (4:83)

The following Ahadith of the Holy Prophet (PBUH) are quoted in support of Ijma as a source of Legal Thinking and Islamic Law:

- "My community will never agree upon an error."
- "Assemble the learned from among the believers and consult each other and do not decide on the opinion of one person."
- "What Muslims agree to be good is also good in the sight of Allah and what the Muslims agree to be bad is bad in the eye of Allah."
- "The difference of opinion among the learned of my community is a sign of Allah's grace."
- "Follow the main body for he who is separate from it will be separate in Hell."
- "If anything comes to you for decision, decide according to the Book of Allah. If anything comes to you, which is not in the Book of Allah, then look to the Sunnah of the

Holy Prophet (PBUH). If anything comes to you which is not in the Sunnah of the Holy Prophet (PBUH), then look to what people unanimously agree upon.”

Basis of Ijma

Ijma can be based on:

- **Quran**
- **Sunnah/Hadith**
- **Analogy**
- **Logical Reasoning**

Prophet Muhammad (PBUH) taught his companions to develop a consensus on majority's opinion to establish unity amongst the Muslims. i.e the Battle of Uhad, the Battle of Trench. At the Battle of Uhad his own view was to fight from inside the city but he adopted majority's view to develop a consensus of opinion. Technically the practice of Ijma is referred to the decisions taken on majority's opinion after the death of Prophet Muhammad (pbuh) but he taught his companions how to establish a unanimous decision when a matter is not mentioned in the Quran and the Sunnah of Prophet Muhammad (PBUH).

Examples of Ijma

- Election of Hazrat Abu Bakr as the First Caliph through consensus.
- Compilation of Holy Quran in textual form during the period of Hazrat Abu Bakr.
- Tiraveeh prayer were started in congregation during the period of Hazrat Umar.
- Second call for Juma prayers during the Caliphate of Hazrat Usman.
- Retention of one standard version of the Holy Quran and destruction of all others during the period of the Caliphate of Hazrat Usman to avoid confusion and chaos.
- Aarab (Phonetic symbols) on the Quran during the time of Umayyad caliph Sulaiman.
- Buffalo meat was allowed.
- Dead body's face should be towards Qibla.
- To call Azan in a newly born baby's ear.
- To laugh loudly in prayer breaks the Salat.
- Ahmadis/ Qadiyanis are not Muslims because they do not believe in Prophet Muhammad (PBUH) as the last messenger of Allah.
- Shoes should be put off in mosques.
- Loud speaker can be used in prayer if needed.
- Video filming for productive and educational purpose is allowed.
- Satanic pillars in Mina were enlarged after Ijma.
- Matrimonial alliance (Nikkah) on Skype and video call etc. is allowed when there is no ambiguity on both the sides.
- Moon sighting committee's decision should be accepted as IJMA.
- Miscarried fetus of four months and more should be named, washed and shrouded (coffin), and the funeral prayer offered for him, and should be buried in Muslim grave

yard, and the 'aqeeqah should be done for him. If the age of four months has not been reached, then the funeral prayer should not be offered, and he should not be named or the 'aqeeqah offered, because the soul had not been breathed into him.

- **Test tube baby/ In Vitro Fertilization Pre-Embryo Transfer (IVF–ET) (Assisted Reproductive Technology):** Seeking a cure for infertility is not only permissible, but also encouraged in Islam. In Islamic law, all assisted reproductive technologies (ARTs) are allowed, provided that the source of the sperm, ovum, and uterus comes from a legally married couple during the span of their marriage. No third party should intrude upon the marital functions and procreation. Surrogacy is not accepted in Islam. An excess number of fertilized embryos can be preserved by cryopreservation and may be transferred to the same wife in a successive cycle, while the marriage is intact. Using frozen sperm after the death of the husband is not permitted. Details can be studied on : https://link.springer.com/chapter/10.1007/978-3-319-18428-9_11/fulltext.html

KINDS OF IJMA

There are basically two kinds of ijma;

(i) Explicit Ijma

Explicit ijma is one in which the legal opinions of all the jurists of one period coverage in relation to a legal issue, and each of them states his opinion explicitly.

- It may take place when all the jurists collectively expressed a unanimous opinion.
- It may also take place, when all the jurist in turn of an issue gives similar verdicts independently and at separate time.
- It may also be when other jurist start acting upon the verdict.

(ii) Tacit Ijma

It takes place when some mujtahids issue a verdict on a legal question and rest of the mujtahids come to know of it during the same period, but they keep silent, neither acknowledges it nor refuses it expressly.

Importance of IJMA

- Ijma helps in discovering the law and enforces the principles laid down in the Quran and Sunnah.
- It reflects the collective reasoning of Muslim Ummah.
- It brings unity and harmony in society.
- Ijma helps in the interpretation of 'Sharia'.
- New legislation can be made by ijma according to Quran Sunnah.
- It teaches acceptance and tolerance to the scholars and different groups of Muslims.
- It opens new areas for discussion and research on certain issues. It promotes healthy discussions and debates which promotes learning and reasoning.
- Minority learns to respect majority's view and importance of unity for Muslim Ummah.
- It teaches collective well-being and spirit of National or collective interest instead of personal interests of individuals.
- Most importantly it brings a reconstructive spirit in Islamic law. Islamic laws can meet the challenges of ever-changing societies. Law in itself remains refreshing it in bound-

aries of the Quran and Sunnah according to the demands of changing factors in societies. It is a fact that human societies are in process of evolution. Different factors remain changing. If law cannot modify itself according to the needs of evolution then it will be out dated and obsolete. But it never happens in the case of Islamic law because of its reasoning-based sources of Ijma, Analogy and Logical reasoning. Islamic laws remain thriving, flourishing and fulfilling the demands and needs of changing human societies.

Consensus in today's world!

- It is very important that in the changed political, economic, social and cultural scenario of the 21st century, the contentious issues confronting the Muslim Ummah are discussed thread-bare on international level by experts representing different Muslim countries and then a consensus is evolved by the universal community. Universal scholar council should be made, representing scholars from all around the world, from all Muslim countries and communities and majority's decision should be adopted as a base for IJMA. Muslim can solve their issues and be united only by a good practice of IJMA.
- IJMA unites Muslims on a unanimous decision and brings agreement in different groups and schools of thoughts. When we see the practical side of law it is not possible to implement different laws at a time. Only one law or ruling can be applied in a certain matter in specific time and region. IJMA provides an opportunity to adopt majority's opinion as a law and consider minority's opinion as an approach of a school of thought in that specific case. Minority respects the decision of Majority and accepts the ruling for the sake of UNITY in Muslim Ummah. Unity and respect of others opinion is the basic moto behind the concept of IJMA.
- Muslims can solve all their modern day legal, political, social and legislative issues on the bases of IJMA. In this regard an International council of Scholars could be set up to solve all the issue faced by Muslim's of the world by unanimous/ agreed decision. All Muslim countries and different sects of Muslims should be given proper opportunity in this council.
- Moon sighting is a big issue faced by Muslims in different countries. It can be solved easily by Universal agreement of the Muslim scholar on this matter. Nowadays means of communications have been developed so easily messages can be conveyed and Muslims can celebrate their festivals together all around the world.
- Even if they decide to leave the matter of moon sighting on local scholar councils to decide then minority groups must be agreed with National Moon sighting committee to achieve Unity which is the basic trait of Muslim UMMAH.

Qiyas (Analogy)

Meanings and definition

Qiyas is the fourth source of Islamic Law and is used interchangeably with logic in Islamic law. The root meaning of the word 'Qiyas' is 'accord', 'measuring' and 'equality'.

In the legal sense, Qiyas is a process of deduction by which the law of a text is applied to cases, which, though not covered by the language, are governed by the reason of the text. When clarification of a certain matter or issue is not available in the Holy Quran, the Sunnah or previous Ijmas, then an expert Jurist (Mujtahid) can carry out Qiyas.

Simply it refers to finding out a solution of a new issue on the basis of similar causes between new situation and previously decided issue in the Quran, Sunnah or IJMA. It is finding out an unknown ruling on the basis of known ruling in the Quran, Sunnah or IJMA.

The following Verses of the Holy Quran lend support for Qiyas:

"There are signs in this for people who understand." (13:04)

"And Verily! We have coined for mankind in this Quran all kinds of similitude that happily they may reflect." (39:27)

As for these examples We site them for mankind but none will grasp their meanings except the wise." (29:43)

"Will they then not meditate on the Quran, or are there locks on their hearts?" (47:24)

Support for Qiyas is taken from the following Hadith:

"I decide with my own opinion issues that have not clearly been explained by the Revelation."

Story of Ma'az ibn Jabal:

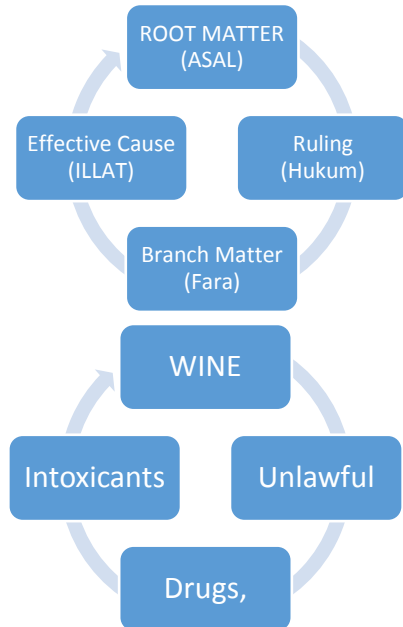
- "When Hazrat Ma'az ibn Jabal was appointed as Governor of Yemen, the Holy Prophet (PBUH) asked him how he would decide the cases coming to him. Hazrat Ma'az said that he would look to the Holy Quran for guidance, if he found nothing there, he would go to the Sunnah and if he still did not find anything in there as well, he would exert himself to try to arrive at a decision. The Holy Prophet (PBUH) is reported to have expressed his satisfaction and happiness at Hazrat Ma'az's reply."

Examples from Sunnah

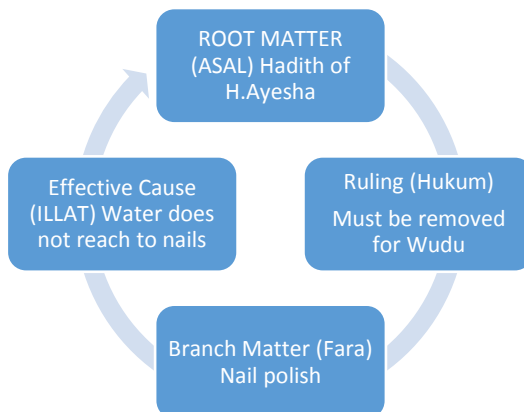
- It is said that a woman came to the Holy Prophet (PBUH) and said that her mother who wanted to perform Hajj had died. She asked whether it was necessary for her to perform Hajj on her behalf. The Holy Prophet (PBUH) paused for a moment and then said: "What would you do if she had left debt? Naturally you would pay it." Thus, the Holy Prophet (PBUH) resorted to analogy to resolve the matter.
- The Holy Quran forbids the marriage of two sisters with a man simultaneously. Keeping the effective cause in his view, the Holy Prophet (PBUH) forbade the combining of aunt and niece in marriage.

Examples of Qiyas

- As the Holy Prophet (PBUH) said that: "Every khumar (wine) is an intoxicant, so Khumar is haram". On the same analogy, opium or marijuana, LSD or cocaine, which were not there when law for the use of wine came into being, have also been declared haram by the Muslim Jurists.



- Wudu is not valid even if the smallest portion of the body, which has to be washed remains dry. According to Hazrat Ayesha if flour is dried on the nails and water has not reached any portion of that nail, Wudu would not be considered valid. Applying this principle in the case of nail polish, Wudu is considered not to have taken place because in this situation too nails remain dry.



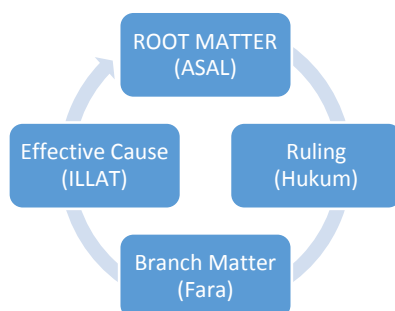
- Blood test in fast is allowed on the basis of cupping therapy which is allowed in fast.
- Blood transfer to patients was allowed on the basis of suckling infants by foster mothers. As milk ultimately also turns into blood and becomes the part of body.
- Hazarat Ali performed Qiyas for punishment of drinking on Umar's request. He compared drinking wine with blaming and suggested to fix 80 lashes punishment for drinking wine. As drinker loses senses and blames people in most of the cases and speaks lie he should be punished equal to blaming of 80 lashes.

- Smoking was prohibited in mosques on the bases on eating raw garlic and onion which produce bad smell and disturb people in gathering. Smoking also produces bad smell and disturbs public is it is also not allowed in mosques and public gatherings
- As a minor is not able to take care of himself, Islam permits appointment of a guardian over him. On the same analogy, guardian can also be appointed over an adult lunatic because he too is incapacitated to take care of his own affairs like a minor.
- As the Holy Quran forbids sales transactions after the call for Friday prayers, by analogy all kinds of transactions have been forbidden, because like sales, these too distract Muslims from going to the mosque for Friday congregation.
- As the Holy Prophet (PBUH) said that: "Every khumar (wine) is an intoxicant, so Khumar is haram". On the same analogy, opium or marijuana, LSD or cocaine, which were not there when law for the use of wine came into being, have also been declared haram by the Muslim Jurists.

People who can do Ijtihad and Qiyas

- Perfect scholars of the teachings of the Holy Quran, the Sunnah, Tabaeen, and Taba Tabaeen.
- Perfect in their knowledge of Islamic jurisprudence.
- Expert grammarians of Arabic.
- Well-versed in scholastic philosophy.
- Well-versed in modern and ancient fields of learning and knowledge.
- **Qiyas should not be against the Quran, Sunnah and Ijma.**
- **Qiyas cannot be done on any other QIYAS.**

Following are the main components of QIYAS



Some of the Scholars such as Zahris & Shia reject Qiyas because of several reasons....

- A verse of the Qur'an says: "**O ye who believe! Put not your selves forward before God and His Apostle.....**" [Qur'an 49 : 1) These Scholars claim that Qiyas (analogy) means "putting yourself forward.
- There are many sayings of the Companions in which they have condemned the use of ra'i/ (personal opinion), and analogy is personal opinion.
- Analogy leads to discord among the Muslims, because it does not lead to exactly the same opinion when different jurists are exercising it and what leads to differences should be shunned.

- It cannot be said that the ahkam of the shari'ah are based upon similarity and equality.
- Sometimes ILLAT or effective cause is not mentioned with order of Shariah in Quran and Sunnah. Jurist try to determine the cause by reasoning or guess which may be wrong. Actual cause ILLAT is only known by Allah.

They favor reason instead of Analogy and consider Aqal (Logical reasoning) as a source of Law.

Arguments in favor of Qiyas

- Quran repeatedly asks us to 'use our reason'
- Hadith of Mu'adh ibn Jabal
- There are many cases in which the Prophet gave answers in a form that was quite similar to analogy (eg Hajj on behalf of Mother)
- The Companions used to settle cases by performing analogy & there are sayings of the Companions to this effect.
- The cases in the texts of the Qur'an and the Sunnah are limited and the cases that are faced by human beings are unlimited, therefore there has to be some way of extending the law in these sources to cover new cases as well so that the new cases are settled according to Islamic legal norms.
- New issues come forward that were unimaginable in the time of the Prophet.
- If cause is not mentioned then whatever is considered as cause by majority of the scholars can be the cause of Ruling/ Law.
- Analogy in matters of belief is forbidden only not in matters of law/jurisprudence.
- They also consider logical reasoning as a source of Law but prefer Analogy before moving towards logical reasoning. If a matter is not found in Analogy then they also use reasoning/AQAL.
- Qiyas on the basis of the Quran, the Sunnah and IJMA is allowed. Qiyas on the basis of another Qiyas is not allowed.

Importance

Qiyas promotes the use of reasoning in boundaries of Quran and Sunnah. Reasoning based human made laws become more nearer to the spirit of the Quran and Sunnah. It provides opportunity to think deeply in Quran and Sunnah and ponder upon its meanings. It brings a reconstructive spirit in Islamic law. Islamic laws can meet the challenges of ever changing societies. Law in itself remains refreshing in boundaries of the Quran and Sunnah according to the demands of changing factors in societies.

It is a fact that human societies are in process of evolution. Different factors remain changing. If law cannot modify itself according to the needs of evolution then it will be out dated and obsolete. But it never happens in the case of Islamic law because of its reasoning based sources of Ijma, Analogy and Logical reasoning. Islamic laws remain thriving, flourishing and fulfilling the demands and needs of changing human societies. It opens new areas for discussion and research on certain issues. It promotes healthy discussions and debates which promotes learning and reasoning on the basis of the Quran and the Sunnah.



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